

**FORM Q
GUARANTY**

FOR VALUABLE CONSIDERATION, _____, a _____ corporation (“Guarantor”), agrees as follows:

1. The term “Agreement” refers to the Comprehensive Agreement (the “CA”) for the Transform 66 P3 Project dated _____, as amended, by and between the VIRGINIA DEPARTMENT OF TRANSPORTATION (the “Department”), and _____, a _____ (“Principal”). The Agreement is hereby incorporated by reference herein. Exhibit A to the Agreement contains the definitions of various terms used in this Guaranty.
2. The term “Obligations” refers to all of the obligations of Principal arising out of, in connection with, under or related to the Contract Documents as they may be amended or supplemented, including without limitation, liability for damages, indemnities and warranties as specified in the Agreement. The term “Equity Owner” means an entity or a firm that has a direct equity interest in the Principal or an indirect equity interest in the Principal through one or more limited liability intermediaries.
3. Guarantor irrevocably and unconditionally, as primary obligor and not merely as surety, guarantees and warrants to the Department and its successors and assigns the full and prompt payment and performance by Principal when due of the Obligations, up to the amount of \$ _____. [to be included if multiple guarantees are provided: Guarantor and _____ shall have joint and several liability for performance of the Obligations, provided that the total liability of Guarantor and such other entities shall not exceed the foregoing limitation on liability.]
4. An Obligation may be incurred by Principal to the Department without further authorization from or notice to Guarantor.
5. In such manner and upon such terms and at such times as it deems best and with or without notice to Guarantor, the Department may alter, compromise, accelerate, extend or change the time or manner for the performance of any Obligation, or release or add one or more guarantors or endorsers, accept additional or substituted security, or release or subordinate any security given to secure the performance of any Obligation. No exercise or non-exercise by the Department of any rights given to it hereby, no dealing by the Department with Principal, any of Principal’s members or any entity with liability for the Obligations, and no change, retirement or suspension of any right or remedy of the Department, shall in any way affect any obligation of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against the Department.
6. The Department may waive any default or may fail to assert any rights (including rights of offset), or grant any other indulgence or concession with respect to all or any part of each Obligation, and may take and deal as herein provided with any bond, letter of credit, guaranty, instrument, document, collateral security or other property given to the Department to secure all or any part of the Obligations or otherwise available to the

Department, and may apply any moneys, property or security available to it in such manner and amounts and at such times to the payment or reduction or performance of any Obligation as the Department may elect. Notwithstanding the foregoing, Guarantor shall remain bound by this Guaranty.

7. Guarantor waives any right to require that any claim or demand be asserted, any remedy available to the Department be enforced, or any action be brought against Principal, any of the Equity Owners or any other party or to require that resort be had to any security or property available to the Department.
8. This Guaranty shall not be affected by any full or partial payment or performance of any Obligation which is required to be returned as a result of or in connection with the insolvency, reorganization or bankruptcy of Principal or any of its members, the dissolution of Principal or otherwise. Guarantor agrees that the Department may, in the event of a default herein or in any Obligation, proceed against Guarantor or Principal or any other entity with liability for the Obligations or any combination of the foregoing, in such order as the Department may deem appropriate. Guarantor waives any defenses it may have by reason of an election of remedies by the Department. Guarantor waives any claims of waiver, release, surrender, alteration, compromise, diligence and filing of claims with any court, provided that the foregoing shall not be deemed to preclude Guarantor from relying on any express, written waivers or modifications of Agreement requirements which were previously made by the Department during the course of performance of the Agreement. Notwithstanding anything to the contrary contained herein, no action of the Department by way of compromise or settlement, in the context of any insolvency, reorganization or bankruptcy of Principal or any of its members, the dissolution of Principal or otherwise, will have any effect on Guarantor's liability hereunder.
9. This Guaranty shall remain in full force and effect irrespective of any interruptions in the business relations of Principal with the Department. The failure by the Department to file or enforce a claim against the estate (either in administration, bankruptcy or other proceedings) of Principal or any other entity with liability for the Obligations shall not operate to release Guarantor from liability hereunder.
10. Guarantor waives:
 - a. notice of acceptance hereof and of the incurring or contracting of any Obligation;
 - b. presentment and demand for payment or performance of any Obligation;
 - c. protest and notice of the dishonor or default to any party with respect to any Obligation;
 - d. all other notices to which Guarantor might otherwise be entitled; and
 - e. any demand for payment hereunder.

11. Until all Obligations have been indefeasibly paid in full and performed, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against the Principal that arises from the performance of the Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution or indemnification against Principal, or participation in any claim, right or remedy of the Department against Principal or any other security or collateral that the Department now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Principal and any Equity Owner to Guarantor, and the right of Guarantor to withdraw any capital invested by Guarantor in Developer (whether directly or through an intermediary Equity Owner), are unconditionally subordinated to all of the Obligations. Whenever and for so long as Principal shall be in default in the performance of an Obligation, Guarantor shall not claim, sue for, collect or accept any payment from Developer or any Equity Owner with respect to any such indebtedness without the prior written consent of the Department. Any payment by Principal or any Equity Owner to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for the Department.
12. Guarantor agrees to pay to the Department without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, including appeals) incurred by the Department in collecting or compromising any Obligation or enforcing this Guaranty against Guarantor or in attempting to do any or all of the foregoing.
13. Guarantor represents and warrants as follows:
 - a. Guarantor is a _____ duly organized, validly existing and in good standing under the laws of _____, and Guarantor is duly qualified to transact business in each jurisdiction where the nature of its activities or the ownership of property makes such qualification necessary;
 - b. Guarantor has full power and authority to transact the business in which it is engaged and to execute and deliver this Guaranty and perform its obligations hereunder;
 - c. This Guaranty has been duly authorized, executed and delivered by Guarantor, and is a valid and binding agreement of Guarantor enforceable in accordance with the terms hereof;
 - d. Neither the execution and delivery of this Guaranty, nor the fulfillment of or compliance with the terms and provisions hereof, will violate any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any mortgage, lien or encumbrance of any nature whatsoever upon any of the properties or assets of Guarantor pursuant to the terms of, Guarantor's formation documents, or any

mortgage, indenture, agreement or instrument to which Guarantor is a party or by which it is bound;

- e. No consent or action of, or filing with, any governmental or public regulatory body or authority is required to authorize, or is otherwise required in connection with, the valid execution, delivery and performance of this Guaranty; and
- f. Guarantor will not take any action which will cause Principal to dissolve.

14. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and the Department, but is not assignable by Guarantor without the prior written consent of the Department, which consent may be granted or withheld in the Department's discretion.

15. Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by facsimile (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the Department:

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

With copies to:

Office of the Attorney General
900 E. Main Street
Richmond, VA 23219
Attention: Chief Transportation Section

If to Guarantor:

[•]
Attention:

Either Guarantor or the Department may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents. All notices sent by facsimile shall also be sent by mail on the same day. All notices and other communications shall be deemed effective upon receipt, if delivered personally or by express or courier service, upon transmission as shown in the confirmation, if delivered by facsimile, and five days following deposit in the United States mail, postage prepaid if delivered by mail.

16. Any forbearance or failure to exercise, and any delay by the Department in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.
17. Should any one or more of the provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions hereof shall be given effect separately therefrom and shall not be affected by such determination. The rights of the Department hereunder are cumulative and shall not be exhausted by any one or more exercises of said rights against Guarantor or any other entity with liability for the Obligations or by any number of successive actions until and unless all Obligations have been fully paid or performed and expiration or termination of the Agreement. Guarantor agrees to execute, have acknowledged and delivered to the Department such other and further instruments as may be required by the Department to effectuate the intent and purpose hereof. No right of action shall accrue on this Guaranty to or for the use of any person or entity other than the Department or its successors and assigns until the Department's claims have been satisfied in full. All words used herein in the singular shall be deemed to have been used in the plural when the context or construction so require. This Guaranty shall be governed by and be construed in accordance with the laws of the Commonwealth of Virginia, without regard to conflict of laws principles.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

_____ a _____

By: _____

Title: _____